

STATE OF MICHIGAN
COURT OF APPEALS

In re RILEY, Minors.

UNPUBLISHED

June 16, 2015

No. 324996

Monroe Circuit Court

Family Division

LC No. 12-022796-NA

In re RILEY, Minors.

No. 325003

Monroe Circuit Court

Family Division

LC No. 12-022796-NA

Before: METER, P.J., and CAVANAGH and WILDER, JJ.

PER CURIAM.

In Docket No. 324996, respondent-mother, Emily Riley, appeals by right the trial court's order terminating her parental rights to the minor children, TAR and ALR, pursuant to MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (children will be harmed if returned to parent). In Docket No. 325003, respondent-father, Jeremy Riley, appeals by right the same order, which also terminated his parental rights to the children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm in both appeals.

I

In September 2012, the trial court authorized a petition seeking court jurisdiction over the children. The petition alleged that respondent-mother had failed to enter a rehabilitation program despite her substance abuse issues, which included an admitted addiction to heroin, and had been staying in a hotel room with the children and a man with a drug-related criminal history. The petition also alleged that respondent-father was a convicted sex offender who was incarcerated in the Monroe County jail because he violated his probation, and that it was believed that he had a past heroin addiction. Respondents entered pleas in admission to some of the allegations in the petition, and the court assumed jurisdiction over the children.

At disposition, the court ordered both respondents to comply with a case service plan and participate in supervised visitation with their children, who had been placed with their maternal

grandfather. Respondents' case service plans required participation in psychological evaluations, substance abuse assessments, and therapy, attendance at a parenting program, maintenance of suitable housing and income, submission to drug screens, participation in the Wrap Around Program, and attendance at courses to obtain a GED. Respondent-father's case service plan also required him to not violate any civil or criminal laws and to comply with all conditions of his release from jail.¹

The court conducted review hearings during 2013 and 2014. Respondent-mother was noncompliant with her treatment plan during this time and was in and out of substance abuse treatment programs, leaving the programs early and continuing to use drugs. She failed to visit the children between November 2012 and August 2013, and after beginning visits in August 2013, she stopped visiting the children on a regular basis. Her visits were suspended in November 2013 due to her failure to resolve her substance abuse issues.

Respondent-father made progress on his treatment plan and, in February 2014, the court returned the children to his care under DHS supervision. In April 2014, respondent-father reported that he was overwhelmed with caring for his children and he relapsed into the abuse of prescription painkillers and heroin use. He also admitted to using drugs with respondent-mother. In July 2014, the children were removed from his care and returned to the care of their maternal grandfather. The children's grandfather testified that, after the children were returned to his care, respondent-mother gave him \$60 and called him three times to check on the children.

On September 14, 2014, the trial court authorized a petition seeking termination of both respondents' parental rights. The petition alleged that respondent-mother had failed to comply with, or benefit from, her case service plan. The petition also alleged that she had a long history of untreated substance abuse; had not remained sober for any significant period of time; had failed to maintain housing and employment; and had failed to visit her children, and failed to submit to drug screens before each visit, for approximately one year. With regard to respondent-father, the petition alleged that he stopped benefiting from his services after the children were returned to his care, relapsed into substance abuse in April 2014, failed to consistently comply with his case service plan after July 2014, and had contact with respondent-mother despite a no-contact order.

In October and November 2014, the court held a three-day hearing on the termination petition, at which neither respondent appeared. At the time of the termination hearings, respondent-mother had not seen the children in over a year, and respondent-father had seen the children once since they were removed from his care in July 2014. Additionally, respondent-mother had overdosed at respondent-father's home on the day before the first hearing on the termination petition.

According to the foster care specialist, respondent-father was arrested one week before the first day of the hearing on the petition. A few days later, after his bond was posted, he ran

¹ Some of the provisions in respondent-father's case service plan were held in abeyance because he was incarcerated at the time of the hearing.

out of a courtroom during a hearing on his probation violation. Neither respondent-father's probation officer nor the foster care specialist had been in contact with respondent-father after he ran out of the courtroom. The foster care specialist noted that substance abuse, mental health concerns, a lack of stable housing, and a lack of stable income were the remaining barriers to both respondents' reunification with the children. Accordingly, she believed that the children would be harmed if they were returned to respondents' care. She also indicated that the children had a strong bond with their maternal grandfather and his fiancé and were doing well in their care.

On the second day of the hearing, respondent-father's counsel was unavailable due to a family emergency. The attorney standing in for his counsel indicated that she had reviewed the case file and discussed the hearing with his counsel. She requested an adjournment if the trial court was not comfortable with her representation of respondent-father. The trial court decided to move forward with the proceedings in order to take testimony from the children's maternal grandfather and adjourn the conclusion of the hearing so that respondent-father's counsel could present her argument. On the third day of the hearing, the children's maternal grandfather provided testimony regarding the children's progress in his care.

Following the proofs, the trial court concluded that the allegations in the petition with regard to respondent-mother had been proven by clear and convincing evidence and that there were statutory grounds to terminate her parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). The trial court found that respondent-mother had abandoned the children, that she had not resolved any of the conditions that caused child protective proceedings to be initiated, that there was no reasonable expectation that she could provide a home or care for the children, and that she appeared to have no interest in the children based on her failure to involve herself in the court proceedings or take the matter seriously. The trial court also concluded that the allegations in the petition with regard to respondent-father had been proven by clear and convincing evidence and that there were statutory grounds to terminate his parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Specifically, the court found that it was likely that respondent-father's issues with criminality and drug use would continue if the children were returned to him in light of the fact that he relapsed shortly after the children were returned to his care (even though he had previously resolved many of the issues) and the fact that his criminality and drug use were ongoing at the time of the termination proceedings. The trial court also noted respondent-father's act of walking out of a courtroom as an indication that he valued his freedom more than his children.

Finally, the trial court concluded that termination of both respondents' parental rights was in the best interests of the children, noting the current welfare of the children, the significant impact of respondents' sporadic contact on the children, the children's need for the stability and permanence, which the maternal grandfather was able to provide, respondents' demonstrated inability to provide the stability, support, and counseling necessary for the children's well-being, respondents' lack of visitation with the children, respondent-mother's lack of interest in the children, and the warrant out for respondent-father's arrest.

II

In Docket No. 324996, respondent-mother argues that the trial court erred in finding that the statutory grounds for termination of her parental rights were established by clear and convincing evidence. In Docket No. 325003, respondent-father indirectly challenges the statutory grounds for termination by arguing that the trial court's factual findings were clearly erroneous because it failed to consider evidence that was favorable to him. We disagree with both arguments.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A factual finding is clearly erroneous if this Court is definitely and firmly convinced that a mistake has been made. *Id.* at 709-710. A trial court's determination regarding the existence of statutory grounds for termination is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

A

First, we conclude that the termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). In relevant part, MCL 712A.19b(3) permits termination of parental rights under the following circumstances:

(a) The child has been deserted under any of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be

able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Only one statutory ground must be established to support termination of a respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

The trial court did not clearly err in terminating respondent-mother's parental rights under MCL 712A.19b(3)(a)(ii). In *In re Mayfield*, 198 Mich App 226, 230, 235; 497 NW2d 578 (1993), this Court approved termination under this provision where the respondent failed to appear at hearings or cooperate with a treatment plan, failed to provide financial support, and had not seen his son for over two years. Similarly, in *In re Laster*, 303 Mich App 485, 492; 845 NW2d 540 (2013), the Court found termination proper because the respondent moved out of state, failed to visit his children or support them, and failed to make himself available for his only court-ordered service, which was a home assessment.

On appeal, respondent argues that termination was not appropriate under MCL 712A.19b(3)(a)(ii) because she visited her children, attended some court hearings, provided money for her children, and asked about them on occasion. In support of her last two claims, she notes that she gave \$60 to the maternal grandfather in August 2014 and called the grandfather three times to ask about the children after they were returned in his care. However, the record indicates that respondent-mother only sporadically visited her children while this case was pending. She failed to visit her children from November 2012 to August 2013. Although she began to participate in visits in August 2013, she stopped visiting the children regularly shortly after that, and visits were suspended in November 2013 because of her lack of efforts to resolve her substance abuse. At the time of the termination hearing, respondent-mother had not seen her children in over a year. Moreover, respondent-mother only sporadically attended substance abuse services to address her main issue of drug addiction and had not completed any other service required by her treatment plan. Given these circumstances, the trial court did not clearly err in terminating respondent-mother's parental rights under MCL 712A.19b(3)(a)(ii).

Furthermore, respondent-mother's failure to resolve her substance abuse and housing issues also justified termination under MCL 712A.19b(3)(c)(i), (g), and (j). Regarding the trial court's termination of parental rights pursuant to (c)(i), the issues that led the court to exercise jurisdiction over TAR and ALR in November 2012 following the entry of respondent-mother's plea were respondent-mother's unresolved drug addiction, which had resulted in a significant risk of harm to the children, and her failure to maintain suitable housing for the children. The trial court's order of disposition required respondent-mother to comply with the case service plan, under which respondent was required, among other things, to obtain and maintain suitable housing, submit to random drug screening, and complete and comply with a substance abuse assessment. While this case was pending, respondent-mother participated in various inpatient and outpatient substance abuse programs. Nevertheless, she engaged in her substance abuse

services only sporadically, left her programs early, and continued to use drugs. Significantly, respondent-mother had a drug overdose the day before the termination hearing started. Additionally, she was homeless during these proceedings, moving between various hotels and friends' residences, and had no suitable housing. The record also shows that respondent-mother failed to participate in or benefit from services, to complete anything on her case service plan, and to visit her children for over a year. Thus, it is apparent that the same issues that led to adjudication continued to exist at the time of the termination proceedings and that there was no reasonable likelihood that the issues would be rectified in a reasonable time. MCL 712A.19b(3)(c)(i).

For the same reasons, the trial court did not clearly err in finding that there was no reasonable likelihood that respondent-mother would be able to provide proper care and custody to her children within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). A parent's failure to comply with a case service plan can be evidence of the parent's inability to provide proper care and custody. See *In re Trejo*, 462 Mich 341, 360 n 16, 360-361; 612 NW2d 407 (2000); see also *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Likewise, the trial court's finding that a statutory basis under MCL 712A.19b(3)(g) was supported by the extensive evidence demonstrating respondent-mother's failure to comply with the case service plan, failure to "involve herself in any of the matters before the[c]ourt," and, as a result, failure to remedy the issues related to her drug addiction and lack of suitable housing during the two-year period after these proceedings were initiated. Similarly, given that a parent's failure to substantially comply with a case service plan is also evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being, see MCL 712A.19a(5); MCR 3.976(E)(2); *In re Trejo*, 462 Mich at 346 n 3, the trial court did not clearly err in concluding that there was a reasonable likelihood, based on respondent-mother's conduct, that the children would be harmed if they were returned to her care, MCL 712A.19b(3)(j).

Respondent-mother contends that her drug addiction may not justify termination if it did not result in neglect or abuse of her children. In support of this claim, she relies on this Court's statement in *In re LaFrance*, 306 Mich App 713, 731-732; 858 NW2d 143 (2014), that "drug use alone, in the absence of any connection to abuse or neglect, cannot justify termination solely through operation of the doctrine of anticipatory neglect."² In *In re LaFrance*, this Court reversed an order terminating the respondents' parental rights to their three older children because the trial court improperly relied on the parents' substance abuse and the doctrine of anticipatory neglect, based on the respondents' treatment of their infant child, where there was no evidence that substance abuse had or would result in neglect of their older children. *Id.* at 732. Unlike the situation in *In re LaFrance*, termination of respondent-mother's parental rights was not based on anticipatory neglect, and respondent-mother expressly admitted that her drug

² Under the doctrine of anticipatory neglect, " '[h]ow a parent treats one child is certainly probative of how that parent may treat other children.' " *In re LaFrance*, 306 Mich at 730, quoting *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973) (alteration in original).

addiction resulted in an inability to adequately care for both of her children.³ Accordingly, we reject respondent-mother's argument.

Therefore, given the evidence in the record, the trial court did not clearly err in finding that the statutory grounds for termination of respondent-mother's parental rights were established by clear and convincing evidence. *In re Mason*, 486 Mich at 152.

B

Second, contrary to respondent-father's assertion that the trial court failed to consider evidence that was favorable to him, we conclude that the trial court did not clearly err in terminating respondent-father's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

As respondent-father asserts on appeal, the record shows that he was in substantial compliance with his case service plan for a significant period of time, and, as a result, the children were returned to his care under court supervision in February 2014. However, a new petition for removal was filed in April 2014 after respondent-father became overwhelmed with caring for the children and relapsed into drug use. The children were removed from his care in July 2014, at which time respondent-father was experiencing significant health issues, exhibiting drug-seeking behaviors, and experiencing difficulties with properly supervising the children. Likewise, at the time of the termination proceedings, respondent-father continued having issues with criminality, as he had recently violated his probation, been arrested, and run out of a courtroom during a court hearing on his probation violation. Moreover, at that point, there were several warrants out for his arrest. Thus, although respondent-father made progress while this case was pending, it was short-lived. At the end of the termination proceedings, the trial court noted that it had presided over the case since inception, indicated that it took judicial notice of the file, and specifically mentioned that respondent-father resolved many of his issues while this case was pending before ultimately relapsing into criminality and drug use. Given these circumstances, there is no indication that the court failed to consider evidence favorable to respondent-father. Thus, respondent-father has not established that the trial court clearly erred in terminating his parental rights. *In re Mason*, 486 Mich at 152.

III

In Docket Nos. 324996 and 325003, both respondents argue that the trial court erred in concluding that termination was in the children's best interests. We disagree.

This Court reviews for clear error a trial court's best-interest determination. *In re White*, 303 Mich App at 713. Pursuant to MCL 712A.19b(5), if the trial court finds by clear and convincing evidence that a statutory basis exists for terminating parental rights, then the court must order termination of the respondent's parental rights, and order that additional efforts for

³ Contrary to respondent-mother's argument on appeal, we find this admission significant despite the fact that respondent made the statement at the dispositional hearing before the trial court assumed jurisdiction over the children.

reunification are not made, if the court finds by a preponderance of the evidence on the whole record that termination is in the best interests of the child. *Id.* In deciding a child's best interests, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *Id.*; *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. "The fact that a child is placed with a relative weighs against termination." *In re Olive/Metts*, 297 Mich App at 42.

In the instant case, the court noted the fact that the children had been in the maternal grandfather's care for two years (except for the brief period when the children were returned to respondent-father), the grandfather's efforts in addressing TAR's speech issue, and the grandfather's desire to adopt the children. Likewise, the evidence indicated that the grandfather had been a source of support for the children since their birth, that their needs were being met in his care, that he could provide them with stability and permanency, and that the children were very bonded to their grandfather. Moreover, the court observed that respondent-mother's last visit with her children was over a year ago, that she had not appeared for the termination hearing, and she did not seem interested in her children. The court also noted that respondent-father had not been regularly visiting his children recently, he failed to appear at the hearing, and he had an outstanding warrant for his arrest. The testimony indicated that the children may still feel some bond with their parents, but TAR had stopped asking about his parents, and their grandfather indicated that the children were experiencing "separation issues." Similarly, the court noted the significant impact of respondents' inconsistent presence in the children's lives. Additionally, the evidence established respondent-mother's lack of compliance with her case service plan, respondent-father's recent incompliance with his case service plan, especially after July 2014, and respondents' continuing inability to care for their children.

Thus, given the evidence in the record regarding respondents' parenting ability, the children's need for permanence and stability, the suitability of the grandfather's home, respondents' lack of or inconsistent compliance with their case service plans, respondents' visitation history, and the children's well-being in their grandfather's care, we find no error in the trial court's finding by a preponderance of the evidence that termination of both respondents' parental rights was in the children's best interests. *In re White*, 303 Mich App at 713-714.

IV

Finally, in Docket No. 325003, respondent-father contends that the trial court abused its discretion in failing to adjourn the termination hearing when his attorney failed to appear on the second day of the hearing and sent a substitute attorney in her place. This Court reviews a trial court's decision on a motion for an adjournment for an abuse of discretion, which "occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *In re Utrera*, 281 Mich App 1, 8, 15; 761 NW2d 253 (2008) (quotation marks and citation omitted); see also *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000). Additionally, prejudice must be demonstrated "as a result of the trial court's abuse of discretion." *People v Snider*, 239 Mich App at 421. In child protective proceedings, a trial court's discretion to grant an adjournment is guided by MCR 3.923(G), which provides that the trial court should grant an

adjournment of a trial or hearing in a child protective proceeding only (1) for good cause, (2) after considering the best interests of the child, and (3) only for the shortest period of time that is necessary. This Court has defined “good cause” as “ ‘a legally sufficient or substantial reason.’ ” *In re Utrera*, 281 Mich App at 11.

Respondent-father has not established that the trial court abused its discretion in deciding to conduct the hearing in the absence of his attorney. The substitute attorney indicated that she had reviewed the file and discussed the hearing with respondent-father’s attorney, and she expressed familiarity with the case. Given these circumstances, we find that the trial court’s conclusion that the attorney was familiar enough with the case to adequately represent respondent in that hearing, together with the trial court’s decision to adjourn the conclusion of the hearing on the termination petition so that respondent-father’s attorney could present closing arguments, was not outside the range of principled outcomes. *Id.* at 15. Moreover, respondent has not shown that he was prejudiced by the trial court’s failure to adjourn the proceeding. *Snider*, 239 Mich App 421.⁴

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder

⁴ In his brief on appeal, respondent-father asserts that in the short period that his counsel had been appointed to represent him, she had become quite familiar with the circumstances of the case, unlike the attorney standing in for her at the hearing, such that “[c]ounsel’s presence was necessary to the representation of [respondent-father].” However, we note that respondent-father’s attorney did not question any of the witnesses during the first day of the hearing, and there is no indication in the record that respondent-father was prejudiced by his attorney’s absence on the second day of the hearing.